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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

2009 APR 24 P 3: 50

Arizona Corporation Commission

DOCKETED

KRISTIN K. MAYES, Chairman
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SANDRA D. KENNEDY
BOB STUMP

AZ CORP COMMISSION
DOCKET CONTROL

APR 24 2009

DOCKETED BY

IN THE MATTER OF THE FORMAL
COMPLAINT OF SULPHUR
SPRINGS VALLEY ELECTRIC
COOPERATIVE, INC. AGAINST
ARIZONA ELECTRIC POWER
COOPERATIVE, INC.

DOCKET NOS. E-01575A-08-0358

E-01773A-08-0358

NOTICE OF JOINT FILING OF
SETTLEMENT AGREEMENT AND
REQUEST TO DISMISS FORMAL
COMPLAINT

Sulphur Springs Valley Electric Cooperative, Inc. ("SSVEC"), Arizona Electric Power Cooperative, Inc. ("AEPCO"), Mohave Electric Cooperative, Inc. ("MEC"), and Trico Electric Cooperative, Inc. ("Trico") (collectively, the "Parties"), through respective counsel undersigned, file for approval by the Arizona Corporation Commission ("Commission"), the attached Settlement Agreement dated April 24, 2009 (the "Settlement Agreement"). The Parties further request that upon Commission approval of the Settlement Agreement the Commission dismiss the July 15, 2008, Formal Complaint filed by SSVEC against AEPCO (the "SSVEC Complaint") with prejudice consistent with the terms of the Settlement Agreement.

On July 15, 2008, SSVEC filed the SSVEC Complaint against AEPCO regarding the manner in which AEPCO is administering the Fuel and Purchase Power Cost Adjustor under Commission Decision No. 68071 (the "Rate Case Decision") and the Commission-approved tariffs by which AEPCO bills its Class A member distribution cooperatives as either All-Requirements Members ("ARMs") or Partial-Requirements Members ("PRMs"). SSVEC became a PRM on January 1, 2008. MEC as a PRM, and Trico as an

1 ARM, were granted intervention in the SSVEC Complaint matter on August 21, 2008, and
2 September 4, 2008, respectively.

3 Following the issuance of the January 9, 2009, Procedural Order denying AEPCO's
4 Motion for Summary Judgment, the Parties agreed to discuss and, if possible, reach
5 settlement of the SSVEC Complaint by focusing on an acceptable method of allocating
6 the costs of the purchased power agreement between AEPCO and Powerex Corporation
7 entered into as of April 18, 2007 (the "Powerex Agreement") consistent with the Rate
8 Case Decision. In furtherance thereof, at the request of the Parties, the Administrative
9 Law Judge suspended the procedural schedule for the SSVEC Complaint to give SSVEC,
10 AEPCO, MEC, and Trico the opportunity to reach a settlement on this issue and, thereby,
11 resolve the SSVEC Complaint.

12 Subject to Commission approval, the Parties have agreed to settle the SSVEC
13 Complaint under the terms and conditions set forth in the Settlement Agreement. The
14 Parties agree that those terms and conditions serve the public interest by providing a just
15 and reasonable resolution of the disputed issues in a manner which is consistent with the
16 Rate Case Decision. Approval of the Settlement Agreement will also serve the public
17 interest by allowing the Parties and the Commission to avoid the expense and delay
18 associated with further litigation. Upon approval of the Settlement Agreement, it will be
19 given full force and effect and the SSVEC Complaint will be dismissed with prejudice
20 consistent with the terms of the Settlement Agreement.

21 The Parties request that the Commission enter its order:

- 22 1. Approving the Settlement Agreement as a full, complete, and final
23 resolution of the SSVEC Complaint; and
 - 24 2. Dismissing the SSVEC Complaint with prejudice consistent with the terms
25 of the Settlement Agreement.
- 26

1 RESPECTFULLY submitted this 24th day of April, 2009.

2
3 SNELL & WILMER L.L.P.

4 By: 

5 Bradley S. Carroll

6 400 East Van Buren

7 One Arizona Center

8 Phoenix, Arizona 85004-2202

9 Attorneys for Sulphur Springs Valley
10 Electric Cooperative, Inc.

11 GALLAGHER & KENNEDY, P.A.

12 By: 

13 Michael M. Grant

14 2575 East Camelback Road

15 Phoenix, Arizona 85016-9225

16 Attorneys for Arizona Electric
17 Power Cooperative

18 CURTIS, GOODWIN, SULLIVAN, UDALL &
19 SCHWAB, P.L.C.

20 By: 

21 Michael A. Curtis

22 William P. Sullivan

23 501 East Thomas Road

24 Phoenix, Arizona 85012-3205

25 Attorneys for Intervenor Mohave
26 Electric Cooperative, Inc.

1 WATERFALL, ECONOMIDIS, CALDWELL,
2 HANSHAW & VILLAMANA, P.C.

3 By:  for Russell E. Jones

4 Russell E. Jones
5 D. Michael Mandig
6 5201 East Williams Circle, Suite 800
7 Tucson, Arizona 85711-4482
8 Attorneys for Intervenor Trico Electric
9 Cooperative, Inc.

10 ORIGINAL and fifteen (15) copies of the
11 foregoing filed this 24th day of April, 2009.

12 Docket Control
13 ARIZONA CORPORATION COMMISSION
14 1200 West Washington
15 Phoenix, Arizona 85007-1104

16 COPY of the foregoing hand-delivered
17 this 24th day of April, 2009, to:

18 Ernest Johnson, Director
19 Utilities Division
20 ARIZONA CORPORATION COMMISSION
21 1200 West Washington Street
22 Phoenix, Arizona 85007-1104

23 Nancy Scott, Staff Attorney
24 Legal Division
25 ARIZONA CORPORATION COMMISSION
26 1200 West Washington Street
Phoenix, Arizona 85007-1104

1 COPY of the foregoing sent via U.S. Mail and
2 E-mail this 24th day of April, 2009, to:

3 Jane L. Rodda, Administrative Law Judge
4 ARIZONA CORPORATION COMMISSION
5 400 West Congress
6 Tucson, Arizona 85701-1347

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**SETTLEMENT AGREEMENT
ARIZONA CORPORATION COMMISSION
DOCKET NOS. E-01575A-08-0358 AND E-01773A-08-0358**

***IN THE MATTER OF THE FORMAL COMPLAINT OF SULPHUR SPRINGS VALLEY
ELECTRIC COOPERATIVE, INC. AGAINST ARIZONA ELECTRIC POWER
COOPERATIVE, INC.***

This settlement agreement dated as of April 24, 2009 ("Settlement Agreement") is entered into by and among Sulphur Springs Valley Electric Cooperative, Inc. ("SSVEC"), Arizona Electric Power Cooperative, Inc. ("AEP CO"), Mohave Electric Cooperative, Inc. ("MEC"), and Trico Electric Cooperative, Inc. ("Trico") (individually "Party" and collectively, the "Parties") for the purpose of settling disputed issues related to the formal complaint filed at the Arizona Corporation Commission ("Commission") on July 15, 2008, by SSVEC against AEP CO in Docket Nos. E-01575A-08-0358 and E-01773A-08-0358.

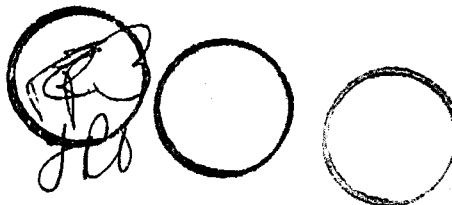
RECITALS

A. SSVEC filed a formal complaint with the Commission against AEP CO ("AEP CO") (the "SSVEC Complaint") regarding the manner in which AEP CO is administering the Fuel and Purchase Power Cost Adjustor ("FPPCA") under Commission Decision No. 68071 (the "Rate Case Decision") and the Commission-approved tariffs by which AEP CO bills its Class A member distribution cooperatives as either All-Requirements Members ("ARMs") or Partial-Requirements Members ("PRMs"). SSVEC became a PRM on January 1, 2008. MEC as a PRM and Trico as an ARM are intervenors in the SSVEC Complaint.

B. Following the issuance of the January 9, 2009, Procedural Order denying AEP CO's Motion for Summary Judgment, the Parties agreed to discuss and, if possible, reach settlement of the SSVEC Complaint by focusing on an acceptable method of allocating the costs of the purchased power agreement between AEP CO and Powerex Corporation entered into as of April 18, 2007 (the "Powerex Agreement").

C. At the request of the Parties, the Administrative Law Judge ("ALJ") suspended the procedural schedule for the SSVEC Complaint to give SSVEC, AEP CO, MEC and Trico the opportunity to reach a settlement on this issue and, thereby, resolve the SSVEC Complaint.

D. Subject to Commission approval, the Parties have agreed to settle the SSVEC Complaint under the terms and conditions set forth below and agree that such terms and conditions will serve the public interest by providing a just and reasonable resolution of the disputed issues. The Parties further agree that the adoption of this Settlement Agreement by the Commission will serve the public interest by allowing the Parties and the Commission to avoid the expense and delay associated with further litigation.

Three circular stamps or signatures are located at the bottom right of the page. The first circle contains a handwritten signature. The second and third circles are empty.

F. The Parties also agree that this Settlement Agreement will be submitted to the AIJ and the Commission with a request that this Settlement Agreement be approved as a full, complete and final resolution of the SSVEC Complaint and, upon approval thereof by the Commission, shall be given full force and effect.

NOW, THEREFORE, in consideration of the mutual conditions and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

ARTICLE I

FPPCA TREATMENT OF POWEREX AGREEMENT AND OTHER COSTS

1.1 For 2007 and 2008, the Parties have agreed to certain adjustments that will be implemented in AEPCO's upcoming September 1, 2009, FPPCA filing. AEPCO will credit or charge each Member in its September 1, 2009 FPPCA filing to be effective October 1, 2009, the adjustments shown in Attachment 1 for each of the FPPCA periods starting as of October 1, 2007, April 1, 2008, October 1, 2008 and April 1, 2009.

Additionally, AEPCO will accumulate and pay interest on any such adjustment amount that is a credit to initial allocation amount. Interest will be computed on such credit amounts for the number of months from September 30, 2009, back to the effective date of the FPPCA adjuster that resulted in the initial allocation. The interest rate shall be the rate of interest specified for late payments pursuant to the respective Partial Requirements Capacity and Energy Agreements between AEPCO and SSVEC and MEC in effect as of the date of this Settlement Agreement.

1.2 With respect to 2009 and 2010, the Parties agree as follows:

1.2.1 In administering the FPPCA, except to the extent that the energy from the Powerex Agreement is re-sold pursuant to Section 1.2.2 below, AEPCO shall assign to ARM loads the energy obtained under the Powerex Agreement, thereby reducing ARM loads served by all other AEPCO Resources, and assign all costs of such energy from the Powerex Agreement to the ARMs.

1.2.2 The ARMs may direct AEPCO in advance to resell the energy of the Powerex Agreement in any manner whatsoever. In such event, AEPCO shall assign all costs of such resold energy as well as all revenues derived from such resale to the ARMs in the calculation of the FPPCA.

1.2.3 AEPCO shall not at any time in 2009 or 2010 impute through the FPPCA, or otherwise charge the PRMs for, the cost of any new monthly or seasonal purchased power agreement entered into for the purpose of replacing energy from the Powerex Agreement sold by AEPCO pursuant to 1.2.2 and supplementing the capacity available to serve ARM loads from AEPCO Resources excluding the Powerex Agreement, but

Handwritten signature and two circular stamps. The signature is written in dark ink and appears to be 'J. H. C.'. To the right of the signature are two circular stamps. The first stamp is a solid black circle. The second stamp is a circle with a smaller circle inside it, also in black ink.

including the Griffith PPA and the Southpoint PPA; provided, nothing contained herein shall prohibit AEPCO from entering into a purchased power agreement for purposes of economic energy replacement of existing AEPCO Resources other than the Powerex Agreement from which all Class A members will benefit in proportion to their loads served from such AEPCO Resources. In advance of entering into a monthly or seasonal purchase, AEPCO shall classify, and document the reasons for such classification, the monthly or seasonal purchase either as replacing resold energy from the Powerex Agreement or replacing other AEPCO Resources.

1.2.4 For hourly or day ahead purchases, to the extent AEPCO firm loads in any hour exceed AEPCO firm resources (including the Griffith PPA and Southpoint PPA) minus (a) SRSG Reserves in the amount of 50 MW and (b) any of the Powerex energy sold pursuant to 1.2.2, AEPCO shall exclude the cost of such difference in the calculation of FPPCA costs and the cost of such difference shall not be assigned to the ARMs or PRMs.

ARTICLE II

APPROVAL TO ENTER INTO SETTLEMENT AGREEMENT

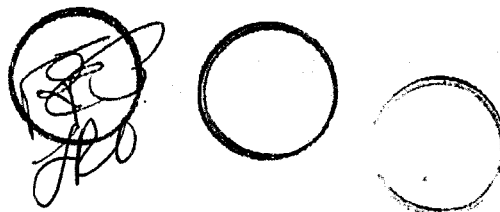
Each Party hereby represents and warrants that that it has all necessary power and authority to enter into this Settlement Agreement and to carry out its obligations hereunder. This Settlement Agreement has been duly executed and delivered by each Party and constitutes the legal, valid and binding obligation of each Party enforceable as against a Party in accordance with its terms.

ARTICLE III

COMMISSION APPROVAL OF SETTLEMENT AGREEMENT

3.1 The Parties shall promptly file the fully-executed Settlement Agreement with the Commission and shall jointly request that the ALJ recommend that the Commission approve such Settlement Agreement as a full, final and complete resolution of the SSVEC Complaint. The Parties also will request that Commission approval of the Settlement Agreement will include dismissal of the SSVEC Complaint with prejudice consistent with this Agreement.

3.2 The Parties further agree that the Settlement Agreement shall set no precedent nor prejudice with respect to any Party's position as to how AEPCO should recover costs of purchased power agreements other than (i) the Powerex Agreement through its termination date



of September 1, 2010 and (ii) the Griffith PPA and the Southpoint PPA through October 31, 2010, in the upcoming AEPCO rate case which has been ordered by the Commission to be filed prior to July 1, 2009, whether or not such case is timely filed or delayed for any reason whatsoever.

3.3 Should the Commission for whatever reason indicate that it intends to reject or modify the Settlement Agreement as executed and filed by the Parties, the Parties shall jointly request that the Commission delay final action and shall reconvene and attempt in good faith to remedy the concerns expressed by the Commission as to the Settlement Agreement to the maximum extent possible. In the event modifications to the Settlement Agreement acceptable to the Parties are not reached, or the Commission does not approve the Settlement Agreement, the Settlement Agreement shall be deemed null and void and any Party may request that the ALJ resume the SSVEC Complaint proceeding and may take positions in the proceeding without regard to or prejudiced by their respective positions in the Settlement Agreement.

ARTICLE IV

RELEASE OF CLAIMS

The Parties agree that upon Commission approval of the Settlement Agreement, each Party hereby mutually releases all other Parties from all claims with respect to the SSVEC Complaint and whether AEPCO's administration of the FPPCA is consistent with Commission Decision No. 68071, so long as such administration is consistent with Article I herein.

ARTICLE V

GOVERNING LAW AND VENUE

Arizona law, without regard to choice of law principles, will govern and apply to any and all claims under this Settlement Agreement. The Party initiating any legal proceedings with respect to this Settlement Agreement shall bring such proceeding at the Commission or in the courts located in Maricopa County, Arizona.

ARTICLE VI

REMEDIES

The Parties agree that in the event of a breach of this Settlement Agreement by either Party, the non-breaching Party shall be entitled to pursue all legal and equitable remedies as may be available, including specific performance without having to prove damages.

Handwritten signatures and circular stamps. The first signature is inside a circle, followed by another signature. To the right are two empty circles, and a third circle with some faint markings.

ARTICLE VII

MISCELLANEOUS PROVISIONS

7.1 **Incorporation of Recitals.** The recitals stated above are true and correct and are incorporated herein by this reference.

7.2 **Expenses.** All costs and expenses, including but not limited to fees of counsel, financial advisors, consultants and accountants, incurred in connection with reaching this Settlement Agreement shall be borne by the Party incurring such costs and expenses, whether or not this Settlement Agreement is approved by the Commission.

7.3 **Entire Agreement.** This Settlement Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior agreements and undertakings, both written and oral, between the Parties with respect to the subject matter hereof. Words, terms and conditions contained under one heading in this Settlement Agreement shall be read in concert with all other words, terms and conditions in this Settlement Agreement (**in pari materia**).

7.4 **Amendment.** This Settlement Agreement may not be amended or modified except by an instrument in writing signed by the Parties.

7.5 **Assignment.** No Party will assign, sublet or transfer any interest in this Settlement Agreement without the prior written consent of all Parties.

7.6 **Severability.** Subject to the provisions of Section 3.3, if any provision of this Settlement Agreement, including any phrase, sentence, clause, article, section or subsection is inoperative or unenforceable for any reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatsoever.

7.7 **Joint Work Product.** This Settlement Agreement is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel. In the event of any ambiguities, no inferences related to the drafting of this Settlement Agreement shall be drawn against any Party.

7.8 **Advice of Counsel.** The Parties acknowledge that, in executing this Settlement Agreement, each has had the opportunity to seek the advice of independent legal counsel, and has read and understood all of the terms of this Settlement Agreement.

7.9 **Headings.** The headings contained in this Settlement Agreement are for purposes of convenience only and shall not affect the meaning or interpretation of this Settlement Agreement.


A handwritten signature, possibly "JL", is written over a circular stamp. To the right of this are two more circular stamps, one slightly overlapping the other.

7.10 Time of the Essence. Time is of the essence in this Settlement Agreement and with respect to the performance required by each Party hereunder.

7.11 Counterparts. This Settlement Agreement may be executed and delivered (including by PDF and facsimile transmission) in one or more counterparts, each of which when executed shall be deemed to be an original, but all of which taken together shall constitute one and the same Settlement Agreement.

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the date set forth above.

Sulphur Springs Valley Electric Cooperative, Inc.


Authorized Signature

Printed Name: CREDEN W. HUBER
Title: CHIEF EXECUTIVE OFFICER

Arizona Electric Power Cooperative, Inc.

Authorized Signature

Printed Name: _____
Title: _____

Mohave Electric Cooperative, Inc.

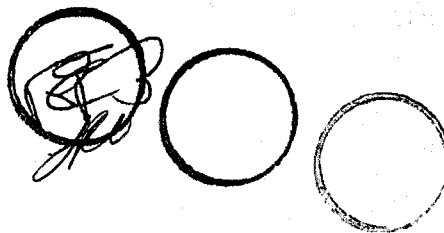

Authorized Signature

Printed Name: Lyn R. Opatka
Title: BOB PRESIDENT

Trico Electric Cooperative, Inc.

Authorized Signature

Printed Name: _____
Title: _____



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Sulphur Springs Valley Electric Cooperative, Inc.

Authorized Signature

Printed Name: _____

Title: _____

Arizona Electric Power Cooperative, Inc.

Authorized Signature

Printed Name: _____

Title: _____

Mohave Electric Cooperative, Inc.

Authorized Signature

Printed Name: Lyn R. Opalka

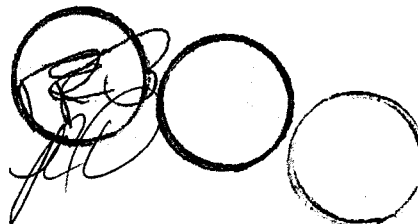
Title: BOO PRESIDENT

Trico Electric Cooperative, Inc.

Authorized Signature

Printed Name: _____

Title: _____



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Sulphur Springs Valley Electric Cooperative, Inc.

Authorized Signature

Printed Name: _____
Title: _____

Arizona Electric Power Cooperative, Inc.

Donald W. Kimball
Authorized Signature

Printed Name: Donald W. Kimball
Title: CHIEF EXECUTIVE OFFICER

Mohave Electric Cooperative, Inc.

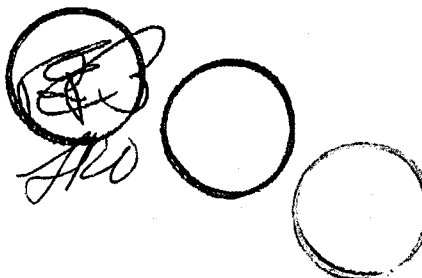
Lyn R. Oratka
Authorized Signature

Printed Name: Lyn R. Oratka
Title: BOD PRESIDENT

Trico Electric Cooperative, Inc.

Authorized Signature

Printed Name: _____
Title: _____



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IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the date set forth above.

Sulphur Springs Valley Electric Cooperative, Inc.

Authorized Signature

Printed Name: _____

Title: _____

Arizona Electric Power Cooperative, Inc.

Authorized Signature

Printed Name: _____

Title: _____

Mohave Electric Cooperative, Inc.

Authorized Signature

Printed Name: _____

Title: _____

Trico Electric Cooperative, Inc.



Authorized Signature

Printed Name: GEORGE P. DAVIES

Title: PRESIDENT



ATTACHMENT 1 TO THE SETTLEMENT AGREEMENT SUMMARY OF 2007 AND 2008 ADJUSTMENTS

SUMMARY OF CHANGES IN 2007 OF ALLOCATIONS OF POWEREX BY FPPCA PERIOD

	October 1, 2007	April 1, 2008	Total 2007
MEC: CHARGE / (CREDIT) (\$)	(\$216,446.14)	(\$321,606.11)	(\$538,052.25)
SSVEC: CHARGE / (CREDIT) (\$)	\$107,426.99	\$181,754.18	\$289,181.17
ARM: CHARGE / (CREDIT) (\$)	\$109,019.15	\$139,851.93	\$248,871.08

SUMMARY OF CHANGES IN 2008 OF ALLOCATIONS OF POWEREX BY FPPCA PERIOD

	October 1, 2008	April 1, 2009	Total 2008
MEC: CHARGE / (CREDIT) (\$)	(\$9,817.86)	(\$137,960.61)	(\$147,778.48)
SSVEC: CHARGE / (CREDIT) (\$)	(\$7,920.69)	(\$168,981.40)	(\$176,908.09)
ARM: CHARGE / (CREDIT) (\$)	\$17,744.66	\$306,942.02	\$324,686.58

TOTAL OF 2007 and 2008 CHANGES IN FPPCA COSTS BY COOPERATIVE

	2007	2008	TOTAL
MEC: CHARGE / (CREDIT) (\$)	(\$538,052.25)	(\$147,778.48)	(\$685,830.73)
SSVEC: CHARGE / (CREDIT) (\$)	\$289,181.17	(\$176,908.09)	\$112,273.08
ARM TOTAL: CHARGE / (CREDIT) (\$)	\$248,871.08	\$324,686.58	\$573,557.66
ARM BY COOPERATIVE: CHARGE / (CREDIT) (\$)			
ANZA	\$13,057.75	\$16,632.80	\$29,690.55
DUNCAN	\$8,050.67	\$9,829.76	\$17,880.43
GRAHAM	\$47,596.10	\$68,404.34	\$106,000.43
TRICO	\$180,166.56	\$239,819.68	\$419,986.25